

By: Lozano, Canales, Zerwas, Howard,
Davis of Harris

H.B. No. 16

Substitute the following for H.B. No. 16:

By: Lozano

C.S.H.B. No. 16

A BILL TO BE ENTITLED

1 AN ACT

2 relating to sexual harassment, sexual assault, dating violence, and
3 stalking at public and private postsecondary educational
4 institutions.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 51, Education Code, is amended by adding
7 Subchapter E-2 to read as follows:

8 SUBCHAPTER E-2. SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING
9 VIOLENCE, AND STALKING

10 Sec. 51.251. DEFINITIONS. In this subchapter:

11 (1) "Coordinating board" means the Texas Higher
12 Education Coordinating Board.

13 (2) "Dating violence" means abuse or violence, or a
14 threat of abuse or violence, against a person with whom the actor
15 has or has had a social relationship of a romantic or intimate
16 nature.

17 (3) "Postsecondary educational institution" means:

18 (A) an institution of higher education, as
19 defined by Section 61.003; and

20 (B) a private or independent college or
21 university approved for purposes of the tuition equalization grant
22 program under Subchapter F, Chapter 61.

23 (4) "Sexual assault" means sexual contact or
24 intercourse with a person without the person's consent, including

1 sexual contact or intercourse against the person's will or in a
2 circumstance in which the person is incapable of consenting to the
3 contact or intercourse.

4 (5) "Sexual harassment" means unwelcome, sex-based
5 verbal or physical conduct that:

6 (A) in the employment context, unreasonably
7 interferes with a person's work performance or creates an
8 intimidating, hostile, or offensive work environment; or

9 (B) in the education context, is sufficiently
10 severe, persistent, or pervasive that the conduct interferes with a
11 student's ability to participate in or benefit from educational
12 programs or activities at a postsecondary educational institution.

13 (6) "Stalking" means a course of conduct directed at a
14 person that would cause a reasonable person to fear for the person's
15 safety or to suffer substantial emotional distress.

16 Sec. 51.252. POLICY ON SEXUAL HARASSMENT, SEXUAL ASSAULT,
17 DATING VIOLENCE, AND STALKING. (a) Each postsecondary educational
18 institution shall adopt a policy on campus sexual harassment,
19 sexual assault, dating violence, and stalking. The policy must:

20 (1) include:

21 (A) definitions of prohibited behavior;

22 (B) sanctions for violations;

23 (C) the protocol for reporting and responding to
24 reports of campus sexual harassment, sexual assault, dating
25 violence, and stalking;

26 (D) interim measures to protect victims of sexual
27 harassment, sexual assault, dating violence, or stalking during the

1 pendency of the institution's disciplinary process, including
2 protection from retaliation, and any other accommodations
3 available to those victims at the institution; and

4 (E) a statement emphasizing the importance of:

5 (i) a victim of sexual harassment, sexual
6 assault, dating violence, or stalking going to a hospital for
7 treatment and preservation of evidence, if applicable, as soon as
8 practicable after the incident; and

9 (ii) a victim of a crime reporting the crime
10 to law enforcement as soon as practicable after the commission of
11 the crime; and

12 (2) be approved by the institution's governing board
13 before final adoption by the institution.

14 (b) Each postsecondary educational institution shall make
15 the institution's campus sexual harassment, sexual assault, dating
16 violence, and stalking policy available to students, faculty, and
17 staff members by:

18 (1) including the policy in the institution's student
19 handbook and personnel handbook; and

20 (2) creating and maintaining a web page on the
21 institution's Internet website dedicated solely to the policy.

22 (c) Each postsecondary educational institution shall
23 require each entering freshman or undergraduate transfer student to
24 attend an orientation on the institution's campus sexual
25 harassment, sexual assault, dating violence, and stalking policy
26 before or during the first semester or term in which the student is
27 enrolled at the institution. The institution shall establish the

1 format and content of the orientation. The orientation:

2 (1) may be provided online; and

3 (2) must emphasize the importance of:

4 (A) a victim of sexual harassment, sexual
5 assault, dating violence, or stalking going to a hospital for
6 treatment and preservation of evidence, if applicable, as soon as
7 practicable after the incident; and

8 (B) criminal matters being handled primarily by
9 law enforcement.

10 (d) Each postsecondary educational institution shall
11 develop and implement a comprehensive prevention and outreach
12 program on campus sexual harassment, sexual assault, dating
13 violence, and stalking. The program must address a range of
14 strategies to prevent campus sexual harassment, sexual assault,
15 dating violence, and stalking, including a victim empowerment
16 program, a public awareness campaign, primary prevention,
17 bystander intervention, and risk reduction.

18 (e) Each biennium, each postsecondary educational
19 institution shall review the institution's campus sexual
20 harassment, sexual assault, dating violence, and stalking policy
21 and, with approval of the institution's governing board, revise the
22 policy as necessary.

23 Sec. 51.253. ONLINE REPORTING SYSTEM. (a) Each
24 postsecondary educational institution shall develop and establish
25 or contract with a third party to develop and establish an online
26 reporting system through which a student enrolled at or an employee
27 of the institution may report to the institution an allegation of

1 sexual harassment, sexual assault, dating violence, or stalking
2 committed against or witnessed by the student or employee,
3 regardless of the location at which the alleged incident occurred.

4 (b) The online reporting system must enable a student or
5 employee to report the alleged incident anonymously.

6 (c) A protocol for reporting sexual harassment, sexual
7 assault, dating violence, or stalking adopted under Section 51.252
8 must comply with this section.

9 Sec. 51.254. AMNESTY FOR STUDENTS REPORTING CERTAIN
10 INCIDENTS. (a) A postsecondary educational institution may not
11 take any disciplinary action against a student enrolled at the
12 institution who in good faith reports to the institution being the
13 victim of, or a witness to, an incident of sexual harassment, sexual
14 assault, dating violence, or stalking for a minor violation by the
15 student of the institution's code of conduct occurring at or near
16 the time of the incident. For purposes of this subsection, a minor
17 violation of an institution's code of conduct is any violation for
18 which the permissible punishments do not include suspension or
19 expulsion from the institution.

20 (b) A postsecondary educational institution may investigate
21 to determine whether a report of an incident of sexual harassment,
22 sexual assault, dating violence, or stalking was made in good
23 faith.

24 (c) Subsection (a) does not apply to a student who reports
25 the student's own commission or assistance in the commission of
26 sexual harassment, sexual assault, dating violence, or stalking.

27 (d) This section may not be construed to limit a

1 postsecondary educational institution's ability to provide amnesty
2 from application of the institution's policies in circumstances not
3 described by Subsection (a).

4 Sec. 51.255. VICTIM REQUEST NOT TO INVESTIGATE. (a) If an
5 alleged victim of an incident of sexual harassment, sexual assault,
6 dating violence, or stalking reported to a postsecondary
7 educational institution requests the institution not to
8 investigate the alleged incident, the institution may investigate
9 the alleged incident in a manner that complies with the
10 confidentiality requirements under Section 51.261. In determining
11 whether to investigate the alleged incident, the institution shall
12 consider:

13 (1) the seriousness of the alleged incident;
14 (2) whether the institution has received other reports
15 of sexual harassment, sexual assault, dating violence, or stalking
16 committed by the alleged perpetrator or perpetrators;

17 (3) whether the alleged incident poses a risk of harm
18 to others; and

19 (4) any other factors the institution determines
20 relevant.

21 (b) If a postsecondary educational institution decides not
22 to investigate an alleged incident of sexual harassment, sexual
23 assault, dating violence, or stalking based on the alleged victim's
24 request not to investigate, the institution shall take any steps
25 the institution determines necessary to protect the health and
26 safety of the institution's community in relation to the alleged
27 incident.

1 (c) A postsecondary educational institution shall inform an
2 alleged victim of an incident of sexual harassment, sexual assault,
3 dating violence, or stalking who requests the institution not to
4 investigate the alleged incident of the institution's decision
5 whether to investigate the alleged incident.

6 Sec. 51.256. DISCIPLINARY PROCESS FOR CERTAIN VIOLATIONS.

7 A postsecondary educational institution that initiates a
8 disciplinary process against a student enrolled at the institution
9 for violating the institution's code of conduct by committing
10 sexual harassment, sexual assault, dating violence, or stalking
11 shall:

12 (1) provide to the student a meaningful opportunity to
13 admit or contest the alleged violation at a disciplinary
14 proceeding, whether formal or informal;

15 (2) ensure that both the student and the alleged
16 victim have reasonable and complete access to all evidence related
17 to the alleged violation not later than five days before the date on
18 which the disciplinary process begins, including any statements
19 made by the alleged victim or by other persons, information stored
20 electronically, written or electronic communications, social media
21 posts, or physical evidence; and

22 (3) permit both the student and the alleged victim to
23 safely question witnesses of the alleged violation in an
24 appropriate manner, as determined by the institution.

25 Sec. 51.257. STUDENT WITHDRAWAL OR GRADUATION PENDING
26 DISCIPLINARY CHARGES. (a) If a student withdraws or graduates from
27 a postsecondary educational institution pending a disciplinary

1 charge alleging that the student violated the institution's code of
2 conduct by committing sexual harassment, sexual assault, dating
3 violence, or stalking, the institution:

4 (1) may not end the disciplinary process or issue a
5 transcript to the student until the institution makes a final
6 determination of responsibility; and

7 (2) shall expedite the institution's disciplinary
8 process as necessary to accommodate the student's interest in a
9 speedy resolution.

10 (b) On request by another postsecondary educational
11 institution, a postsecondary educational institution shall provide
12 to the requesting institution information relating to a
13 determination by the institution that a student enrolled at the
14 institution violated the institution's code of conduct by
15 committing sexual harassment, sexual assault, dating violence, or
16 stalking.

17 Sec. 51.258. TRAUMA-INFORMED INVESTIGATION TRAINING. Each
18 peace officer employed by a postsecondary educational institution
19 shall complete training on trauma-informed investigation into
20 allegations of sexual harassment, sexual assault, dating violence,
21 and stalking.

22 Sec. 51.259. MEMORANDA OF UNDERSTANDING REQUIRED. To
23 facilitate effective communication and coordination regarding
24 allegations of sexual harassment, sexual assault, dating violence,
25 and stalking at the institution, a postsecondary educational
26 institution shall enter into a memorandum of understanding with one
27 or more:

1 (1) local law enforcement agencies;

2 (2) sexual harassment, sexual assault, dating
3 violence, or stalking advocacy groups; and

4 (3) hospitals or other medical resource providers.

5 Sec. 51.260. RESPONSIBLE OR CONFIDENTIAL EMPLOYEE. Each
6 postsecondary educational institution shall:

7 (1) designate:

8 (A) one or more employees to act as responsible
9 employees for purposes of Title IX of the Education Amendments of
10 1972 (20 U.S.C. Section 1681 et seq.); and

11 (B) one or more employees as persons to whom
12 students enrolled at the institution may speak confidentially
13 concerning sexual harassment, sexual assault, dating violence, and
14 stalking; and

15 (2) inform each student enrolled at the institution of
16 the responsible and confidential employees designated under
17 Subdivision (1).

18 Sec. 51.261. CONFIDENTIALITY. (a) The protections
19 provided by this section apply to:

20 (1) an alleged victim of an incident of sexual
21 harassment, sexual assault, dating violence, or stalking reported
22 to a postsecondary educational institution;

23 (2) a person who reports to a postsecondary
24 educational institution an incident of sexual harassment, sexual
25 assault, dating violence, or stalking, who sought guidance from the
26 institution concerning such an incident, or who participated in the
27 institution's investigation of such an incident; and

1 (3) a person who is alleged in a report made to a
2 postsecondary educational institution to have committed or
3 assisted in the commission of sexual harassment, sexual assault,
4 dating violence, or stalking if, after completing an investigation,
5 the institution determines the report to be unsubstantiated or
6 without merit.

7 (b) Unless waived in writing by the person, the identity of
8 a person described by Subsection (a):

9 (1) is confidential and not subject to disclosure
10 under Chapter 552, Government Code; and

11 (2) may be disclosed only to:

12 (A) the postsecondary educational institution to
13 which the report described by Subsection (a) is made as necessary to
14 conduct an investigation of the report;

15 (B) a law enforcement officer as necessary to
16 conduct a criminal investigation of the report described by
17 Subsection (a); or

18 (C) a health care provider in an emergency
19 situation, as determined necessary by the institution.

20 (c) A disclosure under Subsection (b) is not a voluntary
21 disclosure for purposes of Section 552.007, Government Code.

22 (d) Information regarding an incident of sexual harassment,
23 sexual assault, dating violence, or stalking disclosed to a health
24 care provider or other medical provider employed by a postsecondary
25 educational institution is confidential and may be shared by the
26 provider only with the victim's consent. The provider must provide
27 aggregate data or other nonidentifying information regarding those

1 incidents to the institution's Title IX coordinator.

2 Sec. 51.262. REPORT. (a) Each postsecondary educational
3 institution shall annually submit to the institution's governing
4 body a report concerning any reports of sexual harassment, sexual
5 assault, dating violence, or stalking received by the institution
6 during the preceding academic year. The report may not identify any
7 person.

8 (b) A report submitted under Subsection (a) is public
9 information subject to disclosure under Chapter 552, Government
10 Code, and a private or independent college or university approved
11 for purposes of the tuition equalization grant program under
12 Subchapter F, Chapter 61, is a governmental body with respect to
13 such a report for purposes of Chapter 552, Government Code.

14 Sec. 51.263. COMPLIANCE. (a) If the coordinating board
15 determines that an institution of higher education is not in
16 substantial compliance with this subchapter, the coordinating
17 board may reduce the allocation of state funding to the institution
18 for the following academic year in an amount determined by the
19 coordinating board.

20 (b) If the coordinating board determines that a private or
21 independent college or university is not in substantial compliance
22 with this subchapter, the coordinating board may:

23 (1) assess an administrative penalty against the
24 college or university in an amount not to exceed \$2 million; or

25 (2) declare students enrolled at the college or
26 university ineligible for tuition equalization grants under
27 Subchapter F, Chapter 61.

1 (c) In determining the amount of a penalty under Subsection
2 (a) or (b)(1), the coordinating board shall consider the
3 seriousness of the violation.

4 (d) If the coordinating board takes an action under
5 Subsection (a) or (b) against an institution of higher education or
6 a private or independent college or university, as applicable, the
7 coordinating board shall provide to the institution or college or
8 university written notice of the coordinating board's reasons for
9 taking the action.

10 (e) An institution of higher education or a private or
11 independent college or university against which the coordinating
12 board takes an action under Subsection (a) or (b), as applicable,
13 may appeal the action taken in the manner provided by Chapter 2001,
14 Government Code.

15 (f) A private or independent college or university may not
16 pay an administrative penalty assessed under Subsection (b)(1)
17 using state or federal money.

18 Sec. 51.264. ADDITIONAL TYPES OF INCIDENTS. A
19 postsecondary educational institution may adopt a policy to include
20 incidents other than sexual harassment, sexual assault, dating
21 violence, or stalking for purposes of any provision of this
22 subchapter.

23 Sec. 51.265. TRAINING ADVISORY COMMITTEE. (a) The
24 commissioner of higher education shall establish an advisory
25 committee to develop recommended training for responsible and
26 confidential employees designated under Section 51.260 and for
27 Title IX coordinators at postsecondary educational institutions.

1 (b) Each member of the advisory committee is appointed by
2 the commissioner of higher education and must be a chief executive
3 officer of a postsecondary educational institution or a
4 representative designated by that officer.

5 (c) The advisory committee shall annually review and, if
6 necessary, update the recommended training.

7 Sec. 51.266. RULES. The coordinating board shall adopt
8 rules as necessary to implement and enforce this subchapter,
9 including rules that:

- 10 (1) define relevant terms; and
- 11 (2) ensure implementation of this subchapter in a
12 manner that complies with federal law regarding confidentiality of
13 student educational information, including the Family Educational
14 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

15 SECTION 2. Section 51.9363, Education Code, is repealed.

16 SECTION 3. The changes in law made by this Act apply
17 beginning with the 2017-2018 academic year.

18 SECTION 4. Not later than January 1, 2018, each public or
19 private postsecondary educational institution shall develop and
20 establish the online reporting system required under Section
21 51.253, Education Code, as added by this Act.

22 SECTION 5. This Act takes effect immediately if it receives
23 a vote of two-thirds of all the members elected to each house, as
24 provided by Section 39, Article III, Texas Constitution. If this
25 Act does not receive the vote necessary for immediate effect, this
26 Act takes effect September 1, 2017.